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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 NUANCE INDUSTRIES, INC., a New York
13 Corporation,

14 Plaintiff,

15 v.

16
17 THE TJX COMPANIES, INC., a Delaware
18 Corporation; E-LO SPORTSWEAR LLC, a
19 New York Limited Liability Company; and
DOES 1 through 10,

20 Defendants.
21

Case No.:

PLAINTIFF'S COMPLAINT FOR
COPYRIGHT INFRINGEMENT

Jury Trial Demanded

22 Nuance Industries, Inc., by and through its undersigned attorneys, hereby prays
23 to this honorable Court for relief based on the following:

24 **JURISDICTION AND VENUE**

25 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
26 *et seq.*
27

3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

4. Plaintiff NUANCE INDUSTRIES, INC. is a corporation organized and existing under the laws of the State of New York.

6. Plaintiff is informed and believes and thereon alleges that Defendant E-LO SPORTSWEAR LLC (“E-LO”) is a limited liability company organized and existing under the laws of the state of New York, with its principal place of business located at 1 Cape May Street, Harrison, New Jersey 07029, and is doing business in and with the state of California.

2
COMPLAINT

1 8. Plaintiff is informed and believes and thereon alleges that at all times
2 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
3 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
4 at all times acting within the scope of such agency, affiliation, alter-ego relationship
5 and/or employment; and actively participated in or subsequently ratified and/or
6 adopted each of the acts or conduct alleged, with full knowledge of all the facts and
7 circumstances, including, but not limited to, full knowledge of each violation of
8 Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

9 **CLAIMS RELATED TO PATTERN # NT-1558**

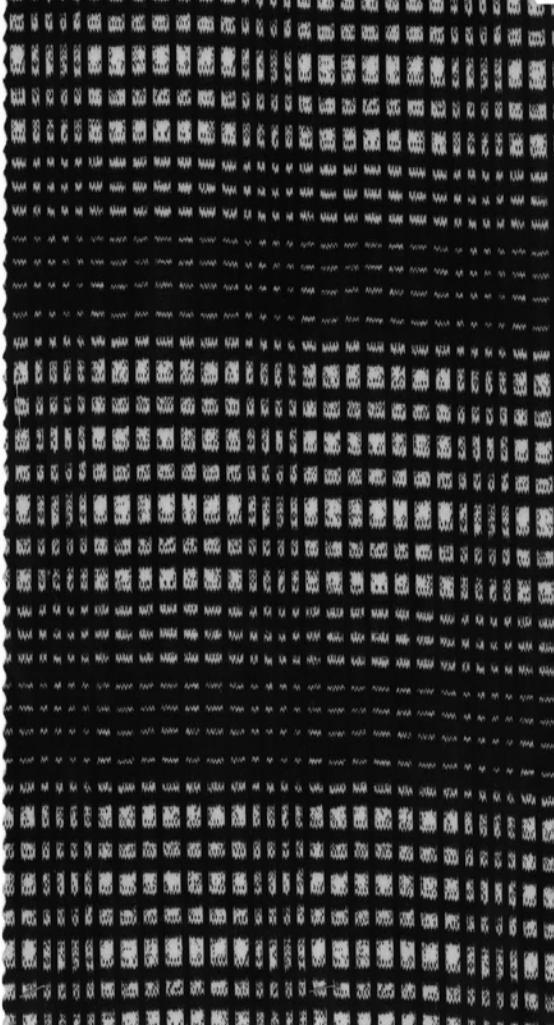
10 9. Plaintiff owns an original two-dimensional artwork used for purposes of
11 textile printing entitled Pattern # NT-1558 ("Subject Design") which has been
12 registered with the United States Copyright Office.

13 10. Prior to the acts complained of herein, Plaintiff widely disseminated fabric
14 bearing Subject Design to numerous parties in the fashion and apparel industries.

15 11. Plaintiff is informed and believes and thereon alleges that following its
16 distribution of Subject Design, TJX, E-LO, DOE Defendants, and each of them
17 distributed and/or sold fabric and/or garments featuring a design which is
18 substantially similar to Subject Design (hereinafter "Subject Product") without
19 Plaintiff's authorization, including but not limited to products sold by TJX under
20 SKU 1000061648 and bearing the label "Zac & Rachel," indicating that it was
21 manufactured by or for E-LO.

1 12. An image of Subject Design and an exemplar of Subject Product are set
2 forth hereinbelow:

3 **Subject Design**



Subject Product



21 **FIRST CLAIM FOR RELIEF**

22 (For Copyright Infringement - Against All Defendants, and Each)

23 13. Plaintiff repeats, realleges and incorporates herein by reference as though
24 fully set forth the allegations contained in the preceding paragraphs of this
25 Complaint.

26 14. Plaintiff is informed and believes and thereon alleges that Defendants, and
27 each of them, had access to the Subject Design, including, without limitation,

1 through (a) access to Plaintiff's showroom and/or design library; (b) access to
2 illegally distributed copies of the Subject Design by third-party vendors and/or DOE
3 Defendants, including without limitation international and/or overseas converters
4 and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) access to
5 garments in the marketplace manufactured with lawfully printed fabric bearing the
6 Subject Design.

7 15. Plaintiff is informed and believes and thereon alleges that one or more of
8 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
9 further informed and believes and thereon alleges that said Defendant(s), and each of
10 them, has an ongoing business relationship with Defendant retailers, and each of
11 them, and supplied garments to said retailers, which garments infringed the Subject
12 Design in that said garments were composed of fabric which featured unauthorized
13 print designs that were identical or substantially similar to the Subject Design, or
14 were an illegal modification thereof.

15 16. Plaintiff is informed and believes and thereon alleges that Defendants, and
16 each of them, infringed Plaintiff's copyright by creating, making and/or developing
17 directly infringing and/or derivative works from the Subject Design and by
18 producing, distributing and/or selling Subject Products through a nationwide
19 network of retail stores, catalogues, and through on-line websites.

20 17. Due to Defendants', and each of their, acts of infringement, Plaintiff has
21 suffered damages in an amount to be established at trial.

22 18. Due to Defendants', and each of their, acts of copyright infringement as
23 alleged herein, Defendants, and each of them, have obtained profits they would not
24 otherwise have realized but for their infringement of the Subject Design. As such,
25 Plaintiff is entitled to disgorgement of Defendants', and each of their, profits
26 attributable to the infringement of the Subject Design in an amount to be established
27 at trial.

1 19. Plaintiff is informed and believes and thereon alleges that Defendants, and
2 each of them, have committed copyright infringement with actual or constructive
3 knowledge of Plaintiff's rights such that said acts of copyright infringement were,
4 and continue to be, willful, intentional and malicious.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for judgment as follows:

- 7 a. That Defendants—each of them—and their respective agents and
8 servants be enjoined from importing, manufacturing, distributing,
9 offering for sale, selling or otherwise trafficking in any product that
10 infringes Plaintiff's copyright in the Subject Design;
11 b. That Plaintiff be awarded all profits of Defendants, and each of them,
12 plus all losses of Plaintiff, the exact sum to be proven at the time of trial,
13 or, if elected before final judgment, statutory damages as available under
14 the Copyright Act, 17 U.S.C. § 101 *et seq.*;
15 c. That Plaintiff be awarded its attorneys' fees as available under the
16 Copyright Act U.S.C. § 101 *et seq.*;
17 d. That Plaintiff be awarded pre-judgment interest as allowed by law;
18 e. That Plaintiff be awarded the costs of this action; and
19 f. That Plaintiff be awarded such further legal and equitable relief as the
20 Court deems proper.

21 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
22 38 and the 7th Amendment to the United States Constitution.

23 Dated: December 8, 2015

DONIGER/BURROUGHS

24
25 By: /s/ Stephen M. Doniger
26 Stephen M. Doniger, Esq.
27 Frank Gregory Casella, Esq.
28 Attorneys for Plaintiff